IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 209 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

VIRCHAND FULCHAND AND BROTHERSPETROL AND DIESEL PUMP

Appearance:

1. Criminal Revision Application No. 209 of 2000

MR B.D.DESAI, APP for Petitioner No. 1

MR PK JANI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/04/2002

ORAL JUDGEMENT

1. Heard ld. APP Mr. Desai for the petitioner State. The order passed by ld. District Supply Officer of District : Mehsana is challenged before Special

Judge, Mehsana by way of Criminal Appeal No. 10/2000. The applicant appellant before the Spl. Sessions Judge, Mehsana has applied for inspection of size of pump nozel by the Asstt. Controller of Weight and Measures since the allegation against the applicant appellant is that there is short delivery of 175 ml. per 5 ltr. diesel from diesel delivery pump No.3. On perusal of record, ld. Spl.Judge has passed the order below application exh.6.

2. It can legitimately be argued that the exercise which has been undertaken by ld. Spl.Judge would amount to collection of evidence at the appellate Stage. Ld. Special Judge being first appellate Court on facts and when Court is not equipped with the papers of investigation or inquiry, with a view to do the substantive justice, if the order has been passed by the ld. Special Judge by undertaking aforesaid exercise, it would not be proper to say that the order passed by ld. Special Judge is an illegal order. The Essential Commodities Act does not confer any special powers to the Court exercising appellate jurisdiction. Therefore, the first appellate Court can exercise all consequential powers. In reality, nature of the order passed by ld. Special Judge is of interlocutory nature. So, it can be said that no jurisdictional error has been committed in calling for the report and to collect the evidence in detail. The order passed by ld. Special Judge is not found prejudicial to the other side. Appeal provided under Section 6(C) of Essential Commodities Act empowers to deal with the decision either of the Collector or District Supply Officer with regard to essential commodities seized and confiscated in the course of exercising powers vested in the authority under the Essential Commodities Act or Rules or Ordinances framed thereunder. No patent illegality or irregularity has been committed by the ld. Special Judge and, therefore, Revision Application preferred by the State requires to be rejected and hence the same is rejected.

3. Rule discharged. The order dated 28.3.2000 passed by ld. Special Judge, Mehsana in Criminal Appeal No. 10 of 2000, is hereby confirmed. Yadi to concerned court.

9.4.2002 [C.K. BUCH, J]
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